



U.S. Department of Justice

United States Attorney
Southern District of New York

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

February 22, 2018

BY ECF

The Honorable P. Kevin Castel
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: **United States v. David Bergstein, 16 Cr. 746 (PKC)**

Dear Judge Castel:

The Government respectfully writes to advise the Court that it believes the defense may seek to introduce tomorrow one of the Questioned Documents specifically identified the Government's February 9, 2018 letter seeking a Rule 104 hearing.

In the Government's February 9, 2018 letter, the Government identified a series of specific documents, which were produced mid-trial by the defense that the Government believes may have been fabricated (the "Questioned Documents"). The Government requested in its letter that the defense be precluded from offering into evidence the Questioned Documents based upon their untimely production. The Government requested that in the event the Court decline to grant that relief, the Court proceed with a Rule 104 hearing. One of the Questioned Documents was a "Binding Memorandum of Understanding" between Sovrin Health Systems and Pineboard Holdings, Inc. (the "Pineboard MOI"), which the Government attached to its letter as Exhibit V.

In response to the Government's letter, the Court on February 9, 2018 ordered that the defense to produce the discovery sought in the Government's letter for each of the Questioned Documents held that the Questioned Documents, including Exhibit V, could not be introduced until a Rule 104 hearing had taken place. (*See* Tr. 698 ("THE COURT: I already said if it's one of the questioned documents in the government's letter, I'm holding a hearing. MR. BIENERT: I understand what you're saying. THE COURT: Because I've now had enough in front of me to know that that's what's required. So you won't have to make any proffers or anything at that point on authenticity. We can go right to the hearing and you can prove it up."))).

On February 13, 2018, the defense produced to the Government an email from Robert Silverman to David Bergstein, copying Edward DeFrank, dated February 3, 2018, stating: "David, Ed [DeFrank] and I found this one . . . not sure if it is of any help. We are still looking for our signed agreement. The email attached a scanned and signed version of the Pineboard

2